THE CIVIL RIGHTS OF ENGLISH JEWS[1].

HAVING already surveyed the manner in which a Jewish community was allowed to grow up in England, and the Jewish religion which was at first extra-legal and the profession of which, but for the dispensing power of the Crown, would have involved serious criminal consequences, was at length legalized by being admitted to the benefit of the Toleration Act; it remains to consider the legal rights of professed Jews.

This subject may be conveniently divided here into two heads, civil and political rights; for though it is true that these two adjectives are really synonymous, the one being a Latin word and the other its Greek equivalent, and that, in a country with a popular form of government, no very sharp line of demarcation can be drawn between them, yet the distinction is intelligible and useful for our present purpose; civil rights including the power to protect from wrong both person and property, and political rights the power to take part in the legislation and government of the country. The obvious intention of some of the enactments of the latter half of the seventeenth century was to exclude from any share in the government all who were not members of the Anglican Church; but as to civil rights, with which we will first deal, there were no special enactments concerning the Jews, and they had to take the law as they found it, without any exceptions in their favour in cases where, owing to their own peculiar customs and laws, it would have been not unreasonable to look for them.

We have seen that before the expulsion of the Jews in

[1] This paper forms the eighth of the series on "The Jews and the English Law."

1290 there had been in force several statutes exclusively relating to them, but that these statutes could not affect the Jews on their return in the seventeenth century because they were no longer in the position of bondsmen of the king; but, on the other hand, the method of applying the common law of the land to the Jews that had been in vogue before their banishment, in so far at least as it was not a necessary consequence of the status of villenage which no longer existed, could be and, when substantial justice would thereby be done, actually was revived by the courts of law. The cases in which such application was most necessary were the celebration of marriage and the administration of the oath in courts of justice. The law as to the marriage of Jews must be left to a separate article, and it will suffice now to deal with the capacity of a Jew to be a witness, and his right to be sworn in a manner binding upon his own conscience, namely, on the Pentateuch or the Old Testament, instead of upon the New Testament.

Lord Coke[1], writing anterior to the resettlement, lays down that an infidel cannot be a witness, and there is little room for doubt that he meant to include Jews, whom he generally calls infidel Jews. Sir Matthew Hale—in a passage of his *History of the Pleas of the Crown*, which, though the work was not published till after his death, on Christmas Day, 1676, must have been written before the point was decided by the Courts, for there is no reference to the decision—takes a very different view. "It is said," he writes, "by my Lord Coke that an infidel is not to be admitted as a witness, the consequence whereof would also be that a Jew (who only owns the Old Testament) could not be a witness. But I take it, that although the regular oath, as it is allowed by the laws of England, is 'tactis sacrosanctis Dei evangeliis,' which supposeth a man to be a Christian, yet in cases of necessity, as in foreign contracts between merchant and merchant, which are many times transacted by Jewish brokers, the testi-

[1] Co. Lit., 6 b.

mony of a Jew 'tacto libro legis Mosaicae' is not to be rejected, and is used, as I have been informed, among all nations. Yea, the oaths of idolatrous infidels have been admitted in the municipal laws of many kingdoms, especially 'si iuraverit per verum Deum creatorem,' and special laws are instituted in Spain touching the form of the oaths of infidels. And," he adds, "it were a very hard case, if a murder committed here in England in presence only of a Turk or a Jew, that owns not the Christian religion, should be dispunishable, because such an oath should not be taken, which the witness holds binding, and cannot swear otherwise, and possibly might think himself under no obligation, if sworn according to the usual style of the Courts of England. But then it must be agreed that the credit of such testimony must be left to the Jury[1]." It was not long before the point had to be decided. In the case of Robeley *v.* Langston, which was tried in the Court of King's Bench in the month of January, 1667, several Jewish witnesses were produced and the Chief Justice swore them upon the Old Testament only; whereupon an objection to their evidence was taken on the ground that if it was false, it would not render them liable to a prosecution for perjury, but the Court overruled the objection[2]. The same practice was adopted in the Court of Chancery, though it was apparently not found necessary to introduce it until Michaelmas Term, 1684, when "a Jew being to put in an answer upon a motion, it was ordered that he should be sworn upon the Pentateuch, and that the plaintiff's clerk should be present to see him sworn[3]." Nevertheless the swearing of Jews in this manner was for some time regarded as exceptional, and as such we find references to it in the reports, for instance, in the report of Francia's trial for high treason, in 1717, mention is made of the fact that the witness Gonsales was sworn on the books of Moses; and as late as the year 1729,

[1] *Hist. Placit. Coronae*, part II, p. 279.

[2] 2 Keble, p. 314.

[3] 1 Vern., p. 263.

in the case of Gomez Serra *v.* Muncz, there is a note that "the bail in this case being both Jews were suffered to put on their hats while they took the oath[1]." At length, in Michaelmas Term, 1744, the whole question was discussed in the well-known case of Omychund *v.* Barker, in which Lord Chancellor Hardwicke, assisted by the heads of the three common law courts, decided that all persons who believe in a supreme being, who will punish them if they swear falsely, are competent witnesses, and should take the oath in the form binding upon them according to the tenets of their religion. In the course of his judgment Chief Justice Willes says, "It is plain both from Madox's *History of the Exchequer*, pp. 167 and 174, and from *Selden*, vol. III, p. 1469, that the Jews here in the time of King John and Henry the Third were both admitted to be witnesses and likewise to be upon juries in causes between Christians and Jews, and that they were sworn upon their own books or their own roll, which is the same thing. I will likewise oppose" [to Lord Coke's assertion] "the constant practice here almost ever since the Jews have been permitted to come back again into England; viz., from the 19 Car. II (when the cause was tried which is reported in 2 Keble 314) down to the present times, during which I believe not one instance can be cited in which a Jew was refused to be a witness and to be sworn on the Pentateuch[2]."

The Court further held that perjury might be assigned in cases where the special form of oath had been administered. The objection that this could not be done was taken by counsel for the defendants, who desired to exclude the evidence of persons of the Gentoo religion taken on commission in India on the ground that the words *tactis sacris evangeliis* were necessary words in an indictment for perjury. Upon this objection Lord Chief Baron Parker said, "This is not true in fact; but supposing it was, yet this is not the only case where witnesses cannot be prose-

[1] See XV St. Tr., p. 961 and 2 Strange, p. 821. [2] Willes, p. 543.

cuted, for there is no possibility of prosecuting them where the depositions are taken out of England; but if they were here, I should be of opinion they might be indicted upon a special indictment, for I do not think *tactis sacris evangeliis* are necessary words, for several old precedents are that the party was *iuratus* generally, or *debito more iuratus*[1]." And Chief Justice Willes dealt with the point in the same way, saying, "This objection has been in a great measure already answered by the Chief Baron, and it may receive two plain answers; first that these words, *supra sacrosancta Dei Evangelia* or *tactis sacrosanctis Dei Evangeliis* are not necessary to be in an indictment for perjury. They have been omitted in many indictments against Jews, of which several precedents have been laid before us; and they are not in the precedents of such indictments which I find in an ancient and very good book, entitled *West's Simboliography*; but it is only there said *supra sacramentum suum dixit et deposuit* or *affirmavit et deposuit.* Besides, this argument if it prove anything, proves a good deal too much; for if there were anything in it, many depositions of Christians have been admitted, and many more must be admitted or else there will be a manifest failure of justice, where the witnesses are certainly not liable to be indicted; for when the depositions of witnesses are taken in another country, it frequently happens that they never come over hither, or if they do cannot be indicted for perjury because the fact was committed in another country[2]."

It is plain from the report that several prosecutions had been instituted against Jews for perjury because precedents had been searched and brought before the Court; but, on the other hand, such prosecutions must have been very rare, for when in the course of his argument the Solicitor-General was requested by the Lord Chief Justice to deal with the point, he declared, "There is no instance of a Jew's being indicted for perjury." Lord Chief Justice Lee, "I have

[1] 1 Atk., p. 43. [2] Willes, pp. 553, 554.

tried a Jew myself upon an indictment of perjury." Mr. Solicitor-General insisted, "That the indictment would not be wrong against a Jew if it was *tacto libro legis Mosaicae*[1]." Half a century later it became necessary to hold that a Jew who professed belief in the doctrines of Christianity might, although never formally admitted to Christianity, be sworn in the common form on the New Testament. In the case of the King against Gilham, one John King, a money broker, was called as a witness and sworn in the ordinary way. He said that he was born a Jew but had been of the established religion since he had been of capacity to judge for himself, and that he now professed to be of that persuasion. He admitted that he had been married according to the Jewish rites, and that his first wife had been a Jewess, and that he had never been baptized or formally renounced the Jewish religion or been admitted a member of the Established Church. Lord Kenyon ruled that as the witness considered himself bound by the precepts of Christianity, that the obligation of an oath so taken was sufficiently binding[2].

As questions of this kind occasionally arose[3] the Act

[1] 1 Atk., p. 35. For the report of the case see 1 Atk., pp. 21–30; 1 Wilson, p. 84, and Willes, pp. 538–54.

[2] Rex *v.* Gilham (1795), 1 Esp., p. 286. See also 6 T. R., p. 265. The validity of King's second marriage to Lady Lanesborough had been before Lord Kenyon five years before this time. See Ganer *v.* Lady Lanesborough, 1 Parke, p. 25.

[3] For instance, during the trial of Queen Caroline in the House of Lords in 1820, a discussion arose as to the proper mode of swearing an Italian witness, in the course of which Lord Erskine related the following anecdote. "I remember a case to have occurred when I was at the bar. A person came into the court of King's Bench, in the time of Lord Kenyon or Lord Mansfield, I think Lord Kenyon. Lord Chief Justice Eyre was sitting in the other court—a witness came who did not describe himself to be of any particular sect, entitling him to an indulgence, but stating that from certain ideas in his own mind he could not swear according to the usual form of the oath; that he would hold up his hand and would swear, but would not kiss the book. . . . He gave a reason which appeared to me a very absurd one—'because it was written in the Revelations that the angel standing upon the sea held up his hand.' . . .

to remove doubts as to the validity of certain oaths (1 and 2 Vict., cap. 105) was introduced and passed in the year 1838. It provides "that in all cases in which an oath may lawfully be and shall have been administered to any person, either as a juryman or a witness or a deponent in any proceeding, civil or criminal, in any court of law or equity in the United Kingdom, or on appointment to any office or employment, or on any occasion whatever, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding; and every such person in case of wilful false swearing may be convicted of the crime of perjury in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted."

From the earliest times after the resettlement the judges of the courts of law admitted Jews as competent witnesses and allowed them to take the oath according to their own usages. They also showed, still further, a spirit of toleration by no means universal in the seventeenth century, for they in some instances actually arranged their cause lists in such a way as to allow cases in which it was known Jews would be material witnesses to be heard on days other than the Jewish Sabbath; for example, in the year 1677 the plaintiff in the case of Barker *v.* Warren had leave given by the Court to alter the venue from London to Middlesex because all the sittings in London were on a Saturday and his witness was a Jew and would not appear that day[1]. Similar indulgences when no serious inconvenience has been caused have frequently been

I said this does not apply to your case, for in the first place you are no angel, secondly, you cannot tell how the angel would have sworn if he had been on shore." Lord Kenyon, having consulted Chief Justice Eyre held that, though the witness was not of any particular sect, the form of oath which he said would be binding on his conscience (whether his reason was a good one or a bad one) ought to be administered to him. (*Hans. Parl. Deb.*, 2nd series, vol. II, p. 912).

[1] 2 Mod. Rep., p. 271.

granted, and in the year 1900 Mr. Justice Ridley postponed the sitting of the Long Vacation Court, which would have taken place on the Day of Atonement, to the following day, at the request of Mr. D. L. Alexander, Q.C., the present President of the Board of Deputies, who at that time was the leading counsel practising in the Vacation Court. This example was still more recently followed by Mr. Justice Bigham, who sat late and so arranged his list at the Liverpool Winter Assizes of 1904 that the evidence in the Jewish libel case of Fineberg *v.* the Chief Rabbi and the members of the Liverpool Schechita Board should be concluded before the commencement of the Jewish Sabbath.

In the same generous spirit, if we may make a short digression, the courts in enforcing the law merchant, which is incorporated in the common law, have had regard to Jewish religious scruples and have held the necessity of observing the Jewish Sabbath or other holy day set apart by the Jews for religious purposes a special circumstance excusing a Jew in the habit of observing it from performing on that day any act of business which otherwise would be incumbent upon him; for instance, in the case of a bill of exchange or promissory note notice of dishonour must be given within a reasonable time of the actual dishonour of the bill or note, and in the absence of special circumstances the notice is not given within a reasonable time unless it is sent off on the day after the dishonour of the bill; but the fact that such day is Sunday, Christmas Day, Good Friday, or a Bank Holiday is a sufficient excuse entitling the holder or indorser of the bill to give the requisite notice upon the day following, and on the same principle it has been held that a Jew is not bound to give such notice on the Day of Atonement but may wait till the next day, and the same principle would extend to the Jewish Sabbath and New Year, and the first and last days of the Festivals in the case of a person accustomed to keep his place of business closed on those days.

The point was decided as long ago as 1811, in the case of Lindo *v.* Unsworth. Then the bill sued on had been dishonoured on Saturday, Oct. 6, and Messrs. Hoare, the bankers, in whose hands the bill was, sent to give notice of the dishonour to the plaintiff on Monday the 8th, but that being the Day of Atonement, and he being by religion a Jew, his counting-house was shut and there was no way to communicate the notice to him until after the post had been dispatched. On the 9th he sent off a letter by the post giving notice of the dishonour of the bill, addressed to the defendant at Lancaster. It was contended that the notice was bad, but Lord Ellenborough ruled as follows :— "I think the plaintiff was excused from giving notice on the 8th upon the score of his religion. The law required him to give notice with reasonable diligence; and I think he did so, if he sent off the letter as soon as he could after the termination of the festival, during which he was absolutely forbid to attend to secular affairs. The law merchant respects the religion of different people. For this reason we are not obliged to give notice of the dishonour of a bill on our Sunday. But it was equally impossible for the defendant to give this notice on the 8th of October. The letter sent off on the 9th is therefore sufficient," and there was a verdict for the plaintiff[1].

Returning from this digression we have seen that the capacity of a Jew to be a witness was decided soon after the resettlement in a manner contrary to the view held by Lord Coke. That great jurist had also expressly laid down that a Jew was incapable of bringing an action, and this point also had soon to be decided. The real difficulty of admitting a Jew's evidence was the mode of administering the oath, but the alleged incapacity had been based, not upon the form of the oath, but upon the argument that the testimony of infidels in whatever way they were sworn could not be accepted.

[1] Lindo *v.* Unsworth (1811), 2 Com., p. 602. See also Tassel *v.* Lewis (1695), 1 Lord Raymond, p. 743, and the Bills of Exchange Act, 1882, sec. 49 (12) and sec. 92.

The alleged incapacity to sue was also supported by similar reasoning. Christianity being part and parcel of the law of England, those who did not profess it could not have the rights of Englishmen but, whether born within the king's allegiance or not, must be aliens, nor could they be alien friends, but must be regarded as alien enemies, even though they might be here under the special permission of the king. Lord Coke, in his report of the judgment of the Exchequer Chamber in Calvin's case, thus lays down the law: "All infidels are in law *perpetui inimici*, perpetual enemies (for the law presumes not that they will be converted, that being *remota potentia*, a remote possibility), for between them, as with the devils, whose subjects they be, and the Christian there is a perpetual hostility, and can be no peace; for, as the Apostle saith, 2 Cor. vi. 15 'Quae autem conventio Christi ad Belial, aut quae pars fideli cum infideli?' and the law saith, 'Iudaeo Christianum nullum serviat mancipium, nefas enim est quem Christus redemit blasphemum Christi in servitutis vinculis detinere.' Register 287 'Infideles sunt Christi et Christianorum inimici.' And herewith agreeth the book in 12 H. 8, fol. 4, where it is holden that a Pagan cannot have or maintain any action at all[1]." In his introduction to the report Coke admits that he has exercised what he styles the right of every reporter to state the true reasons and causes of the judgment in the way that seems to him the fittest and clearest for the right understanding of them. In consequence, even at the time the report was very severely criticized. Nathaniel Bacon says of it: "In handling this case the honourable Reporter took leave to range into a general discourse of Ligeance, though not directly within the conclusion of the case[2]."

Nevertheless a statement of law made by so high an authority was generally accepted, and we find the very

[1] Rep. VII. 17 a, 17 b.

[2] *Historical Discourse on the Uniformity of the Government of England*, part II, cap. 8, edition of 1647, p. 78.

words of Lord Coke's proposition embodied in Wingate's *Maxims of Reason or the Reason of the Common Law of England*[1]. Nor was the doctrine regarded as at all unreasonable, seeing that it was undoubtedly the law that a person excommunicated by the law of holy church was at this time incapable of bringing an action[2]. It was much enlarged upon in the arguments of counsel in the great case of monopolies between the East India Company and Sandys, where the question for decision was whether the Company, which had obtained from the king letters patent conferring upon its members the exclusive privilege of trading to the East Indies, could maintain an action for damages against the defendant for trading thither without licence. It was contended that inasmuch as the inhabitants of the Indies were infidels no subjects of the king could trade with them without licence from the king for fear that they might renounce their faith; for the king has the preservation of religion by the law vested and reposed in him, and will take care to give licence to traffic to such only as he is confident will never waver from their profession. In support of this contention the passage in Coke was cited and the treatment of the Jews prior to the expulsion was referred to. Upon this topic Pollexfen in his speech for the defendant said: "My lord, pray let us consider of late times what a number of Jews have lived among us; should we declare this for law at this day, that the people ought to use them as alien enemies, strip them, plunder them, knock them on the head, kill them and slay them? What would be the consequence? What work would this make? For if this be true, what they assert that they are perpetual enemies, then we can have no peace with them; whoever owes a Jew anything may play the Jew

[1] Maxims, edition of 1658, p. 10.

[2] Co. upon Lit., 138 b. This disability continued until 1813 when it was removed by statute (53 Geo. III, cap. 127, sec. 3). For the effect of excommunication and its employment before the passing of this statute see Lecky, *Hist.*, vol. III, pp. 494-6.

with him, never pay him; whoever has a mind to anything he has, may take it away from him; if he has a mind to beat him, and knock him on the head, he may; there is no protection for him, nor peace with him. My lord, I do believe that it is true that the Jews being under the curse, and having been a vagrant people for so long a time, and having no prince to defend them, it is probable they have been made havoc of, and our kings and princes have made bold to do with them according to their own pleasures; though what is recorded of it is so long ago, that it is hard to know the whole truth. But I think they are no precedents to be followed now, unless they had been followed by a succession of practice and authority in our books of law[1]." Sir Robert Sawyer, the Attorney-General, who appeared for the plaintiffs, met this argument by saying that if infidels came into England under a safe-conduct, then until such safe-conduct was formally determined by the king, no subject could seize the person or goods of such alien enemies, and that even when the safe-conduct was determined the right of seizing the property of alien enemies did not belong to the subjects, but was expressly reserved to the king. And this he illustrates by the appropriation by the Crown of the debts due to the Jews and the property they left behind them at the time of their expulsion[2]. The court ultimately decided the case, which was pending for nearly two years, from Trinity Term, 1683, to Hilary Term, 1685, in favour of the plaintiff, but the important arguments based on the status of the Jews were not expressly dealt with in the judgments[3].

Before, however, this judgment was given, the point was raised in a separate case in the Court of King's Bench in Michaelmas Term, 1684. The case is noted in Lilly's

[1] X St. Tr., p. 447.

[2] The fallacy of this argument is the omission of all mention of the special status of villeins of the king then attaching to the Jews.

[3] The case is reported, X St. Tr., pp. 371–554, 2 Shower, pp. 366–72, and Skinner, pp. 132–7, 165–73, 197–204, 223–6.

Practical Register as follows: "A Jew brought an action, and the defendant pleaded that the plaintiff is a Jew, and that all Jews are perpetual enemies *Regis et Religionis*." But it was held by the court that "a Jew may recover as well as a villein, and the plea is but in disability so long as the king shall prohibit them to trade; and judgment was given for the plaintiff[1]." The notorious Jeffreys, a great stickler for the prerogative, was at this time head of the King's Bench, and therefore it is not surprising that the decision given in favour of the Jews is based upon the king's right to treat them as villeins, if he pleases, in accordance with the precedents in the times of the Norman and Angevin kings.

A few years later, in 1697, the point was again referred to in Wells *v.* Williams in the Court of Common Pleas; in arguing which case counsel said: "A Jew may sue at this day, but heretofore he could not, for then they were looked upon as enemies. But now commerce has taught the world more humanity[2]," and Serjeant Salkeld, in his report of the case, indicates that the doctrine of Coke was expressly overruled by the Court. "Turks and infidels are not *perpetui inimici*, nor is there a particular enmity between them and us; but this is a common error founded on a groundless opinion of Justice Brooke; for though there be a difference between our religion and theirs, that does not oblige us to be enemies to their persons; they are the creatures of God and of the same kind as we are, and it would be a sin in us to hurt their persons. Per Littleton (afterwards Lord Keeper to Charles I), in his reading on the 27 Ed. III, 17. M.S.[3]— a statute which provides that a merchant stranger shall not be impeached for another's debt but upon good cause, and that merchants of enemies' countries shall sell their goods in convenient time and depart. Nevertheless, as late as 1744 Chief Justice Willes, in giving his opinion in the case of Omychund *v.* Barker, thought it necessary to refer to this

[1] *The Practical Register* (1719), vol. I, p. 4.

[2] 1 Lord Raymond, p. 282.

[3] 1 Salk., p. 46.

question. After citing the passage from Lord Coke, he says: "But this notion, though advanced by so great a man, is, I think, contrary not only to the scripture, but to common sense and common humanity. And I think that even the devils themselves, whose subjects he says the heathens are, cannot have worse principles; and, besides the irreligion of it, it is a most impolitic notion, and would at once destroy all that trade and commerce from which this nation reaps such great benefits. We ought to be thankful to Providence for giving us the light of Christianity, which he has denied to such great numbers of his creatures of the same species as ourselves. We are commanded by our Saviour to do good unto all men, and not only unto those who are of the household of faith [1]."

This is a good illustration of the way in which the common law of England has been altered and developed so as to meet the needs of the times. When fairly considered, Sir Richard Brooke's opinion (upon which Coke's doctrine was professedly founded), as stated in the year book (12 Hen. VIII, fo. 4), cannot properly be called groundless, but it was not necessary for the decision of the case before the court, in which the question was whether an action of trespass would lie for beating the plaintiff's servant and taking away his dog ("quum servum suum verberavit et unum canem (vocat a bloodhound) cepit et asportavit"), to lay down that if a lord beat his villein, or a husband his wife, or a man beat an outlaw or a traitor or a pagan, they shall have no action because they are not able to sue an action. In the same way the statement in Calvin's case that infidels are perpetual enemies could also be treated as merely *obiter dictum*, for it also was irrelevant to the issue in the case, which was whether persons born in Scotland after the union of the crowns of England and Scotland were in England aliens or natural born subjects and so capable of inheriting lands in England. When therefore the point was raised in the courts at the end of Charles II's and in William III's reign, it was

[1] Willes, p. 542.

possible to disregard the opinions of those eminent judges, and to pronounce a decision in accordance with the views of the more enlightened portion of the country at the end of the seventeenth century [1].

The capacity of Jews to hold land or other real property in England was also for a long time a question of serious doubt among lawyers. If all Jews, whether born within the realm or not, were aliens and perpetual enemies of the king, then they were incapable of holding land, for until the year 1870 no alien could hold land in England. The question could hardly be one of practical importance in the early days of the return of the Jews to England, for the newcomers were all foreigners, and it was not till their children born here had grown up that it called for serious attention. By this time Coke's doctrine that infidels are perpetual enemies had been already exploded, and accordingly, in the year 1718, Sir Robert Raymond, then Attorney-General and afterwards Lord Chief Justice of England, gave it as his opinion that a person born in England, though a Jew, could hold and enjoy an estate in fee simple in English land, and that on his death it would descend to his issue as the lands of other subjects, and not be forfeited to the Crown. Some five years later, when the oath of abjuration was modified in favour of the Jews (by 10 Geo. I, c. 4), the opinions of ten of the most prominent counsel of the day were taken upon this question. Though separately consulted, they all agreed that a subject of his Majesty born in

[1] This is of course no reason for asserting that the earlier opinions were groundless; on the other hand that they were probably well founded appears from the following passage in Lord Stowell's judgment in the Le Louis case decided in 1817. "With professed pirates there is no state of peace. They are the enemies of every country, and at all times; and therefore are universally subject to the extreme rights of war. An ancient authority, the laws of Oleron, composed at the time of the Crusades, and as supposed by an eminent leader in those expeditions, our own Richard I, represents infidels as equally subject to those rights; but this rests partly upon the ground of notions long ago exploded, that such persons could have no fellowship, no peaceful communion with the faithful," 2 Dodson, p. 244.

England or a free denizen, being a Jew, may purchase lands[1]. However, shortly afterwards, the pre-expulsion legislation against the Jews was unearthed and relied on in support of the alleged disability. There were two statutes dealing with the matter. In 1271 a statute or ordinance (55 Hen. III) had been enacted, prohibiting Jews from holding any freehold lands excepting only the houses then in their possession in which they were actually living, but four years later the statute *de Iudaismo* slightly increased their power to acquire land, for the right was granted them to "buy Houses and Curtilages in the Cities and Boroughs where they abide, so that they hold them in chief of the King; saving unto the Lords of the Fee their services due and accustomed."

The first of these ordinances does not appear in any of the printed editions of the statutes, and was discovered by Tovey in an ancient MS. in the Bodleian Library, and first printed by him in his *Anglia Iudaica* in the year 1738; its authenticity is, however, firmly established, and so it was agreed that opinions given fifteen years earlier without knowledge of its existence were of little or no value. This point was much discussed during the passage and repeal of the Jewish Naturalization Act of 1753, and after the repeal of the Act Lord Temple moved in the House of Lords that some method might be taken to ascertain this question, and that for this purpose the judges might be desired to attend and give their opinions upon it, but the motion was rejected, principally upon the ground that the judges are not obliged to give their opinions to the House upon such extra-judicial questions, where no bill is depending[2]. Even as late as 1830 there were those who thought that this alleged incapacity still existed, for Mr. Blunt, in his excellent *History of the Jews in England*, published in that year, is unable to resist this conclusion[3],

[1] For copies of these opinions see Webb, "The question whether a Jew, &c." pp. 42–6.

[2] 2 Swanston, p. 508 note, from Mr. Coxe's MS. notes.

[3] See Introduction, p. v, and pp. 119–27.

and in the same year that unrivalled Master of Real Property, Lord St. Leonards, then Solicitor-General, in presenting a petition from one Lewis Levi, asking for a declaratory law to remove all doubts as to the power of Jews to hold landed property in fee, stated in the House of Commons that he concurred entirely with the petitioner in thinking such a law was necessary. A little later in the session leave was asked to bring in a bill for this purpose by Colonel Wilson, who said that "he was aware that the opinions of the high law men at present was, that the Jews might hold landed property like other British subjects; but, though that was the present dictum of lawyers, it did not follow that it would be the opinion of their successors," and added that he had himself been dissuaded some years before from buying some landed property of a Jew by Sir Samuel Romilly who had given it as his opinion that he could not obtain a good title from a Jew. The motion was opposed by Mr. R. Grant, who had taken up the Jewish cause, on the ground that it would be prejudicial to the general question of the abolition of the Jewish disabilities to deal with them piecemeal, and negatived without a division[1]. It has already been pointed out that these ancient statutes could have no application to the Jews after their return to England centuries later, when the status of villeinage no longer existed[2]; and certain it is that the Jews long before 1846, when the Ordinance of Henry III and the Statute *de Iudaismo* were formally repealed, did with impunity openly hold and enjoy landed estates other than houses in towns or cities in which they resided; a well-known instance is given by Sir Francis Goldsmid, Q.C., in his remarks on the civil disabilities of British Jews, who says that the late Chief Justice Lord Ellenborough (who died in 1818) gave a practical proof of his concurrence in the belief that Jews might hold

[1] Hansard, 2nd series, vol. XXIV, p. 236, XXV, p. 429.
[2] *J. Q. R.*, vol. XIV, pp. 667-9.

land, by purchasing without hesitation of Mr. Benjamin Goldsmid a valuable freehold seat at Roehampton [1].

If a Jew born here, or otherwise having acquired the rights of a natural born subject, was capable of holding land and other real property, then there was nothing in our law to prevent his holding an advowson, a species of real property which confers upon the owner the right of presentation to a church or ecclesiastical benefice. And so a Jew, owning an advowson, might present a duly qualified person to fill any vacancy which might occur. It must, however, be evident that if this form of property had been frequently possessed by Jews, attempts, which would have almost certainly proved successful, would have been made to abolish it. Indeed, the right had been taken from Roman Catholics by various statutes, and in cases of advowsons owned by Papists the right of presenting to the benefices when they became vacant vested in the Universities of Oxford and Cambridge, according as the livings were situate in the several counties mentioned in the Acts [2]. Similarly, in the Act to permit persons professing the Jewish religion to be naturalized by Parliament, the famous Jew Act of 1753, a clause was inserted disabling Jews from purchasing or inheriting any advowson or right of patronage, but the popular clamour raised by the passage of this Act was so great that the Houses of Parliament felt constrained to repeal it as the first measure of the ensuing session, and, as the repeal was of the whole Act, the clause imposing the disability was also annulled [3]. Henceforth, therefore, the Jews were under no such disability, unless the statutes or ordinances of the

[1] p. 4. See also Sir Samuel Romilly's argument in the Bedford Charity case, 2 Swanston at p. 511, and for the whole subject Lord Lyndhurst's remarks in introducing the Religious Opinions Relief Bill (1846) in the House of Lords. Hans., *Parl. Deb.*, 3rd series, vol. LXXXV, p. 1254.

[2] See 3 Jac. I, cap. 5, secs. 18–21; 1 W. & M., cap. 26, sec. 4; 13 Anne, cap. 13, sec. 1, and Edwards *v.* the Bishop of Exeter (1839), 7 Scott, p. 676, and 5 Bing. N. C., p. 652.

[3] 26 Geo. II, cap. 26 and 27 Geo. II, cap. 1.

pre-expulsion period, which it has already been argued were not applicable, imposed it. When in 1846 these ordinances were formally repealed, as there was no clause dealing with advowsons in the repealing Act, any doubt there may have been on this point was removed, and, however inconvenient or undesirable it may be, it is now undoubtedly the law that a Jew or any other Dissenter, except a Roman Catholic, may have the right to present to a vacant living in the Church of England[1]. In the case of Jews, though not of other Dissenters, it was thought fit in 1858 to restrict this right by enacting, in the Act which enabled the Houses of Parliament to modify the form of oath to be administered to their members in such a way that Jews could take it, that when any person professing the Jewish religion held any office in the gift of the Crown to which the right of presentation or of appointment to any ecclesiastical benefice is annexed, such right should devolve upon and be exercised by the Archbishop of Canterbury for the time being[2].

A Jew therefore, if he holds an advowson in his own right, may present to a living, but he can only present a duly qualified person, that is, a clerk in holy orders, for no one not episcopally ordained will be instituted by the bishop. A Jew was, unless he had previously renounced his religion, incapable of becoming a clergyman; and therefore Jews who had committed crimes and been convicted of them could not, according to the opinion of many great legal writers, avail themselves of the benefit of clergy which other malefactors, on a first conviction for felony, were at liberty to plead in mitigation of punishment. This right, known technically as *privilegium* or *beneficium clericale*, originated in the claim which in early times, when Papal supremacy was still recognized,

[1] In Mirehouse *v.* Rennell, which was decided in the House of Lords in 1833 before these old ordinances had been repealed, this was stated to be the law by Lord Wynford in 7 Bligh. N. S., 322.

[2] 21 & 22 Vict., cap. 49, sec. 4.

had been made by the ecclesiastics to exemption from temporal jurisdiction, and, when charged with criminal offences, to be tried by the ecclesiastical courts in accordance with the provisions of the canon law. This claim had never been recognized to its fullest extent in England, but the privilege in question had been regulated by a number of statutes, the result of which was that in the time of Charles II any person convicted of felony punishable with death, as all felonies with few exceptions such as petit larceny then were, could before judgment claim his clergy. The result of the granting of this claim was that the convict, having already by conviction suffered forfeiture of all his goods and chattels, was liable to be kept in prison for a time not exceeding one year and, if a layman, to be branded in the hand, after which he could not have the benefit of clergy a second time, but was subject to no further penalty; but, if in holy orders, he was, after 18 Eliz. c. 7, discharged without any further punishment, and could again have the benefit of clergy, however often he might be convicted of a clergyable offence. Benefit of clergy did not, however, apply to cases of treason or any misdemeanour less serious than felony, and was especially ousted or abolished in the case of murder, robbery, and the more atrocious kinds of felony. It was no doubt originally allowed only to those who had been ordained priest or deacon and had "habitum et tonsuram clericalem," but had been demanded on behalf of, and gradually conceded to, all who were supposed to be capable of taking part in the service of the church, which was interpreted as meaning all who could read. But the test of reading was not a severe one, for it became reduced to repeating a scrap of Latin, in nearly all cases the same three words, "Miserere mei, Deus," which became known as the neck verse, and was probably familiar to the bulk of the criminal classes. Thus the privilege was retained long after its original cause had ceased to exist, and defended as a relaxation of the extreme severity of the common law which punished many offences of a comparatively trivial

nature with the penalty of death. But it was never extended to persons not capable of holy orders; by no means a small class, including women and, according to the books, blind persons and all who did not profess the Christian religion; as was said in Poulter's case: "The common law doth not deny *beneficium clericatus,* the benefit of his clergy, but in certain cases: as if a man be convicted of any heresy, he shall not have his clergy for any felony, &c. The same law of a Saracen, Jew, or other infidel. *Gravius est enim divinam quam temporalem laedere maiestatem*; the same law in case of high treason against the king[1]." Such persons, if they offended, were left to the extreme rigour of the common law and to the mercy of the Crown. The unfairness of the state of the law did not pass unnoticed. In 1623 women convicted of grand larceny of goods not exceeding ten shillings in value, and in 1691 women found guilty of any clergyable felony were placed on the same footing as men entitled to clergy. At length in 1706 the idle ceremony of reading, which, as the statute says, by experience had been found to be of no use, was dispensed with by 5 Anne, c. 6, s. 6, which, being liberally interpreted, according to Sir Michael Foster, "entitled those who before were supposed to be under a legal incapacity for orders, as Jews and some others were, and likewise those who in presumption of law were not qualified in point of learning, to the indulgence of the law in common with the rest of their fellow subjects[2]." It should be added that the whole system of benefit of clergy was swept away in 1827 by 7 & 8 Geo. IV, c. 28, which also abolished the death penalty for all felonies which had formerly been clergyable. Sir William Blackstone takes a view contrary to the authorities which have been quoted, and questions whether it was ever ruled for law that Jews were before 1706 incapable of the benefit of clergy. Happily for the good name of the

[1] 11 Co. Rep., p. 29 b.

[2] Foster's *Crown Cases*, p. 306. The statutes as to women are 21 Jac. I, cap. 6 and 3 & 4 W. & M., cap. 9.

Jewish community in these early days, this was a purely academic question, for the Jews in England did not commit the crimes for which this privilege in mitigation of punishment had been granted, as Tovey, speaking of the reign of Charles II, says: "But tho' so few of them were converted, in this Reign, to Christianity, yet in some measure they lived up to the precepts of it, by a regular observance of all civil duties. For I find no complaints against them of any kind, excepting such as related to the Custom-House; from which they cleared themselves by pleading the King's Patent[1]."

The real disabilities, whether civil or political, which were imposed upon the Jews, arose almost entirely from the form of oath or the method of administering it. The political disabilities were occasioned by the tests and forms of oaths enacted by Parliament; the civil ones for the most part by the custom, almost universal at one time, of administering the necessary oath upon the New Testament, a method wholly unacceptable to a conscientious Jew. Many civil disabilities were no doubt imposed by the statutes aimed against Popish recusants, but, as has been previously stated, these statutes were not enforced against the Jews, who, though in strictness liable to the penalties enacted by them, were regarded as exempt by reason of the dispensations granted by Charles and James II. The most irksome

[1] *Anglia Iudaica*, p. 285. The passage in Blackstone is vol. IV, pp. 373, 374, but all the authorities are the other way. See Fost., p. 306; 2 Hale, p. 373; 11 Co. Rep., p. 29 b; and Hawkins, *Pleas of the Crown*, vol. IV, p. 249. Leach's edition of 1795, who says: "Not only those actually admitted into some inferior order of the clergy, but also those who were never qualified to be admitted into orders (which was tried by putting them to read a verse) have been taken to have a right to this privilege, as much as persons in holy orders, whether they were persons lawfully born or bastards, aliens or denizens, in the communion of the church or excommunicate, within the common benefit of the law or outlaws, &c., so that they were not heretics convict, nor Jews, Mahometans, nor Pagans; nor under perpetual disability of going into orders; admitting of no dispensation, as blind and maimed persons formerly were, and women still are."

of all these disabilities was the impossibility for a Jew to become a freeman of the city of London, and so no Jew could exercise any retail trade within the city boundaries, for, by the by-laws of the corporation of London, retail trade in the city was strictly confined to freemen. By the local usage of the city the oath tendered before admittance to all those entitled to the freedom was always administered upon the New Testament, and thus the Jews were excluded. In the year 1739 an attempt was made to allow Jews to take the necessary oath on the Old Testament. In Trinity term of that year a rule was obtained in the court of King's Bench against the city chamberlain, calling upon him to show cause why he should not admit Abraham Rathom, a person duly qualified, to the freedom of the city. To this rule a return was made that it was the ancient custom to administer the oath of a freeman on the New Testament, but that when the oath was tendered to Rathom on the New Testament he refused to take it, although he was not a Quaker, and therefore he was not admitted. The case was three times argued at the bar, and finally the Chief Justice Sir Robert Raymond delivered the resolution of the Court. Upon this point he said: "The last objection made is, that it is not reasonable to confine the oath to the New Testament in trading cities, where a man's religion is of no consequence, and ought not to interfere. But the question before us is not whether upon a proper application the Jews may not be allowed to swear upon the Old Testament, as they do when they give evidence; but whether this custom of taking an oath in the usual manner is unreasonable upon the face of it"; he then cites authorities as to the definition of an oath, and says that Christianity is part of the law of the land, and continues: "It was said that the law does not require the New Testament in all cases, particularly as to evidence given by Jews. But the reason of that is, because all courts desire to have the best security they can for the truth of the evidence; and therefore, as it is known they have a more solemn obligation to speak the truth when

sworn on the Old Testament, it is for that reason allowed. The common regular way of swearing is on the New Testament, and shall we say that a custom requiring such a regular oath is bad? The 1 Eliz., c. 1, s. 19, take notice of an oath upon the Evangelists, and the abjuration oath (till altered for the Jews by 10 Geo. I, c. 10, s. 18) runs upon the true faith of a Christian. We therefore think that this is a good return and allow it[1]."

In this respect Jews were in an inferior position to Quakers, in whose favour Acts of Parliament had been passed, enabling them in all cases where an oath was required, except in criminal cases or to save injuries or to bear any office or place of profit in the Government, to make an affirmation instead of the oath, and who therefore could not be excluded from civil rights upon the ground that they refused to take the oath when duly tendered in the customary form[2].

Thus the Jews were unable to become citizens of London, and were in consequence by the by-laws of the city excluded from all retail trade within its boundaries; wholesale trade was, however, open to them, and from the first days of their return several of their number had occupied prominent positions as merchants in the city. In addition to their total exclusion from all branches of retail trades, the number of Jewish brokers permitted to carry on business in the city was strictly limited to twelve, who received licences from the court of aldermen. These licences they were allowed to transfer upon payment of a fine to the Lord Mayor, which in the course of time

[1] Rex *v.* Bosworth (1739), 2 Strange, pp. 1112–4.

[2] The statutes are 7 & 8 Will. III, cap. 34; 8 Geo. I, cap. 6 & 22 Geo. II, cap. 46, sec. 36. See Rex and Morrice *v.* the Mayor of Lincoln (1698), 12 Mod., p. 190 and 5 Mod., pp. 399–403, where the Mayor of Lincoln was compelled by mandamus to admit a Quaker to the freedom of the city; and Rex *v.* the Turkey Company (1760), 2 Burn, pp. 943 and 1,000, where a Quaker was held to be entitled to be admitted to the Turkey Company upon his affirmation without taking the oath prescribed by the Act of Parliament regulating the Company.

became a valuable perquisite[1]; but if a Jewish broker died without having transferred his licence the appointment fell to the city and might be disposed of to the highest bidder. The place of a Jewish broker was thus of considerable value and at least on one occasion became the subject of litigation in the courts. In the year 1750, upon the bankruptcy of a Jewish broker, a petition was presented to the Court of Chancery, praying that his place as broker might be sold for the benefit of his creditors, but Lord Chancellor Hardwicke held that it could not be considered as an office, and refused the petition[2].

It remains only to add that in the year 1829 the following motion was unanimously carried in the Court of Common Council, "That it be referred to the Committee relative to wholesale dealers to make inquiry and report as to the municipal or legal impediments by which Jews carrying on business in the City of London are debarred from taking up their freedom of the City of London." In consequence of the report subsequently sent in, an Act was passed on December 10, 1830, by the common council, for enabling persons to take the oath according to the forms of their own religion[3]. And so since the year 1831 the custom of

[1] "As much as £1,500 has been paid for a broker's medal, and a system of disgraceful jobbing has been the consequence; a Lord Mayor and four Aldermen next in succession to the chair having formerly conspired together to raise the customary fee for transferring a broker's medal from £100 to £500 in which they succeeded. Taking customary fees (however unjust) might perhaps be palliated by immemorial usage; but may it not be asked in the case just alluded to, in the offensive sense of the word, who was the greatest Jew, my Lord Mayor or the broker? It is not astonishing that cases should have occurred where a broker has retaliated upon his lordship; and it was whispered many years back, when these transactions took place, that by threats of exposure sums have been disgorged and paid back again to the broker." *Brief memoir of the Jews in relation to their civil disabilities* by Apsley Pellott, himself a member of the Corporation, published in 1829.

[2] See *ex parte* Lyons (1750), Ambler, p. 89.

[3] See Welch's *Modern History of the City of London*, p. 167. *Journal*, 105, fols. 5, 6.

administering the necessary oath on the New Testament only was no longer adhered to, and Jews have without any Act of Parliament having been passed in their favour enjoyed all the privileges of the citizenship of London.

In the same way the exclusion of Jews from the various professions was due to their inability or unwillingness to comply with the regulations, especially where these included the taking of an objectionable oath, laid down by those who had the right to control the admission of candidates, and not to any impediment created by the general law of the country. It is sometimes said that the profession of the law was an exception to this general rule, and some colour is lent to this theory by the existence of provisions in certain statutes, namely 1 Geo. I, st. 2, c. 13, s. 2, 2 Geo. II, c. 31, and 9 Geo. II, c. 26[1], obliging "every person who shall act as a Serjeant at Law, Counsellor at Law, Barrister, Advocate, Attorney, Solicitor, Writer in Scotland, Proctor, Clerk or Notary," under pain of incurring severe disabilities and forfeiting £500, to take the oaths mentioned in the first-named Act. Among these was the oath of abjuration (affirming the legality of the Hanoverian succession, and renouncing allegiance to the exiled House of Stuart), which ended with the words "upon the true faith of a Christian," and therefore could not be taken by a self-respecting Jew. In the year 1766 the terms of the abjuration oath were slightly altered (by 6 Geo. III, c. 53), but the obnoxious final words were still retained. But these oaths had not to be taken before admission to the legal profession, but

[1] The earlier statutes 5 Eliz., cap. 1, sec. 5, and 7 Jac. I, cap. 6, secs. 12–18, providing that persons entering the legal profession should take an oath upon the evangelists, were apparently treated as no longer in force, either because they were regarded as being superseded by the later Acts, or because the oaths specified in them had been abrogated by 1 W. & M., cap. 8, and it would seem from sec. 25 of the Act of James I that it was never intended to be more than a temporary Act. These statutes applied equally to schoolmasters, and the last one to the medical profession, and were formally repealed in 1846 by 9 & 10 Vict., cap. 59, sec. 1.

within a certain time afterwards [1]. That time was originally three months, but the second-recited Act extended it to the end of the term following admission, and the third to six months.

In the first year of George II an indemnity Act was passed, by which all persons who had neglected to qualify themselves for any office or employment by omitting to take the necessary oaths, &c., are indemnified and recapacitated provided that they qualified themselves on or before November 28, 1738, and every year until the year 1868, when the enactment of the Promissory Oaths Act made their continuance no longer necessary, similar Acts of indemnity were passed enlarging the time for qualification till some day in the following year. Therefore, after the reign of George II, there was nothing in the Acts recited to prevent a Jew from entering the legal profession, if he was willing to take the risk, not a very serious one, of the annual indemnity Act not being re-enacted, and his accordingly becoming incapacitated to continue to follow his profession upon the expiration of the time limited by the existing Act.

But, on the other hand, admission to the legal profession could only be obtained through the medium of certain persons or societies who, though not bound to do so by any Act of Parliament, might lay down conditions with which Jews could not comply. For instance, the right to admit to the degree of barrister-at-law, holders of which alone are entitled to plead in the superior courts and are therefore considered the higher branch of the legal profession, has from time immemorial been vested in the

[1] The position of Roman Catholics wishing to practise the law was different, for the statute 7 & 8 Will. III, cap. 24, providing under pain of incurring the penalties of praemunire that no person should practise law without first taking certain oaths (none of which were obnoxious to Jews) and making a declaration against transubstantiation, effectually excluded them, prior to the Roman Catholic Relief Act of 1791, from all participation in the legal profession except the calling of a conveyancer which was not expressly mentioned in the statute.

Inns of Court. These are voluntary societies, and no member of the public has an inherent right to be admitted to them[1]. Persons once admitted members must then become qualified for call to the bar, and one of the qualifications which, having regard to the statutes already mentioned, can hardly be considered unreasonable, was the taking of certain oaths, including the oath of abjuration. In the year 1833 Mr. Francis Goldsmid, who had been previously admitted a fellow of the society, applied to the benchers of Lincoln's Inn to be called to the bar, and to be permitted to omit the final words from the oath of abjuration. There was some discussion, at a full meeting of the benchers, during which Lord Campbell, who was then Mr. Campbell, K.C., M.P., says that he pointed out the hardship to be imposed upon the young gentleman, who had been allowed to keep his terms and whose prospects in life would thus be suddenly blasted; to which Mr. Clarke, K.C., leader of the Midland Circuit, and at that time master of the library, replied: "Hardship! no hardship at all! Let him become a Christian, and be d——d to him!" but this reply was not taken as a serious argument, for it was unanimously resolved that the application should be granted, and Mr. Goldsmid was called to the bar and afterwards became a Q.C. and a bencher of his Inn[2].

The precedent was followed by the other Inns, and so a disability, which had long been supposed to exist, was removed without the necessity of the intervention of Parliament. As this is an instance of the way in which almost all the disabilities of this kind could have been, and in many cases were, removed, it may be of interest to append the relevant entries in the records of Lincoln's Inn:—

[1] See the King *v.* the Benchers of Lincoln's Inn (1825), 4 B & C., 855; Neate *v.* Durwan (1874), L. R., 18 Eq. 127; and Manisty *v.* Kenealy (1876), 24 W. R., 918 for the legal position and argument of the Inns of Court.

[2] *Lives of the Chancellors*, vol. V, p. 544 (note).

"1827. Dec. 27. Francis Henry Goldsmid (19) 1 s.
Isaac Lyon G., of Dulwich Hill Ho., Surrey Esq." [1]

"Special Council held on Jan. 25, 1833.
Twenty Benchers present.

Upon the application of Francis Henry Goldsmid, gentleman, a Fellow of this Society, relative to his call to the Bar, It is ordered that the question whether a person of the Jewish persuasion is eligible to be called to the Bar, be adjourned to Wednesday next."

"Special Council held on January 30, 1833.
Nineteen Benchers present.

Upon the motion of the Rt. Hon. Thomas Erskine, Mr. Francis Henry Goldsmid was unanimously called to the Bar."

It remains but to add that the benchers on this occasion merely followed the praiseworthy example which had been set by the leaders of the lower branch of the profession nearly sixty years before. And here again it will be well to set out extracts from the records. In the draft minutes of the Society of Gentlemen Practisers for June 25, 1770, appear the following notes [2], written apparently by a member of the committee:—

"No Jew to be bail for any person but a Jew.

Abraham Abrahams
Jacobs } Fore Street in the Artillery Ground,

admitted as attorneys."

In another document, also to be found in the printed edition of the records, the exact steps by which the admission was effected, are given. It reads as follows:—

"Oath by Jewish Solicitor.

Joseph Abrahams, son of Abraham Abrahams of Mitre Court, Leadenhall Street, was on the 29th Decr., 1763,

[1] *Admission Register*, no. 19, fo. 65; *Records of Lincoln's Inn*, vol. II, p. 127.

[2] *Black Books of Lincoln's Inn*, Book XXII, pp. 233, 234; *Records of Lincoln's Inn*, Black books, vol. IV, p. 185.

articled as clerk to George Ellis the younger of Deans Street, ffetter Lane, an attorney of the Court of King's Bench.

Affidt. of due execution of the Articles sworn 25th Jan. 1764 fyled 18th ffeb. 1764.

On ye 18 July 1769 the said Joseph Abrahams was assigned over by Articles by the said George Ellis to Robt. Gill of Angel Court, Throgmorton Street, Attorney in the Common Pleas.

23rd Jan. 1770 the said Joseph Abrahams was admitted as an Attorney of the King's Bench by Mr. Justice Yates.

13th ffebry 1770 was admitted a Sollr. in Chancery. The Deputy Clerk of ye petty Bagg informed me Abrahams was sworn on the Bible.

10th Geo. 1st. cap. 4. Subjects professing ye Jewish Religion presenting themselves to take ye Oath of Abjuration (the words *Upon the true faith of a Christian* to be omitted) and deemed a sufft. taking of the abjuration Oath[1]."

The profession of a tutor or schoolmaster was also closed to the Jew in the same way as that of the law, for the statutes already enumerated ordaining the taking of obnoxious oaths embraced the followers of the teaching profession as well as the practisers of medicine and law. The disability thus imposed was, however, practically obviated in the way already described after the reign of George II by the passage of the annual indemnity Acts. Yet from this particular profession the Jew was excluded by other statutory provisions. The Act of Uniformity provided that "all masters and other heads, fellows, chaplains and tutors of or in any college, hall, house of learning or hospital, and every public professor and reader in either of the universities and in every college elsewhere . . . and every schoolmaster keeping any public or private school and every person instructing or teaching any

[1] *Records of the Society of Gentlemen Practisers*, pp. 120, 121, 288.

youth in any house or private family as a tutor or schoolmaster," shall *before* admission subscribe a declaration of which an important clause was "that I will conform to the liturgy of the Church of England, as it is now by law established," upon pain of deprivation. It is plain that this penalty was scarcely applicable to a tutor or schoolmaster in a private family, and accordingly the following section provided that such persons should obtain a license from the Bishop of the Diocese, and that if any person should instruct or teach any youth as a tutor or schoolmaster before obtaining such license and subscribing the declaration he should suffer three months' imprisonment without bail or mainprize [1].

These provisions were not very rigorously enforced, at least as regards teaching in private houses, but were quite sufficient to exclude all persons not members of the Church of England from taking any part in the instruction of youth in the public schools of the country, nor can it be doubted that such was the intention of the legislature throughout the eighteenth century, for the Act of 1769, expressly passed for the relief of Protestant dissenting schoolmasters, in terms provides that nothing therein shall extend "to the enabling of any person dissenting from the Church of England to obtain or hold the mastership of any college or school of royal foundation or of any other endowed college or school for the education of youth, unless the same shall have been founded since the first year of the reign of their late Majesties King William and Queen Mary, for the immediate use and benefit of Protestant Dissenters [2]." The Roman Catholic Relief Act of 1791, which enabled Roman Catholics to be tutors or schoolmasters, has a similar proviso "that no person professing the Roman Catholic religion shall obtain or hold the mastership of any college or school of royal foundation or of any other endowed college or school for

[1] 13 & 14 Car. II, cap. 4, secs. 8–11, superseding the provisions of 23 Eliz., cap. 1, secs. 6, 7 and 1 Jac. I, cap. 4, sec. 9.

[2] 19 Geo. III, cap. 44.

the education of youth or shall keep a school in either of the Universities of Oxford and Cambridge[1]."

No relief from this disability was ever expressly granted to the Jews, but in 1846 the Religious Disabilities Act (9 & 10 Vict. c. 59, s. 1), which, as has been already mentioned, placed the Jews as regards education on the same footing as Protestant Dissenters and thereby legalized their communal schools and any endowments attached to them, absolutely repealed the disability so far as it related to teaching in a private house or family, and a quarter of a century later the Universities Tests Act of 1871 (34 & 35 Vict. c. 26, s. 8) abolished it so far as it related to teaching in colleges or public schools.

The Universities themselves were for a long time impossible of access to the Jews, who were nevertheless in regard to the Universities in no better or worse position than all others who dissented from the Church of England. Acts of Parliament had been passed at various times (1 Eliz., c. 1, 7 Jac. I, c. 6, 1 Guil. & Mar., c. 8, 1 Geo. I, st. 2, c. 13) requiring oaths, some of which at least would have been obnoxious to Jews, to be taken by persons admitted to degrees or offices in the Universities. But by means of the annual indemnity Acts, any difficulty thus created might have been surmounted in the same way as entrance to the liberal professions had been gained by the Dissenters. The Universities and their colleges, although not originally ecclesiastical foundations[2], had always kept up a close

[1] 31 Geo. III, cap. 32, sec. 14. The Act further provided that no schoolmaster professing the Roman Catholic religion should receive into his school for education the child of any Protestant father. The rights given to Roman Catholic schoolmasters were thus, though given twenty-two years later, much more limited than those conferred on Protestant Nonconformists. The reason for this was the popular distrust of Roman Catholicism which insisted upon a declaration of the illegality of any endowment of a school or college for the instruction of persons professing that religion; see sec. 17 of the Act—a disability which was only removed by the Roman Catholic Charities Act of 1832 (2 & 3 Will. IV, cap. 115).

[2] The Universities are civil corporations and their colleges eleemosynary corporations (see Stephen's *Blackstone*, vol. III, p. 3).

connexion with the Established Church, and, so far from smoothing the way for sectarians to take degrees, actually insisted on all their members taking religious tests in addition to the statutory oaths, including in most cases subscription to the Thirty-nine Articles of the Church of England. These tests had to be taken at Oxford before matriculation or admission to membership, but at Cambridge might be deferred until candidature for a degree. In 1850 Royal Commissions were appointed to investigate and report on the constitution of the Universities of Oxford and Cambridge, and legislation was initiated in consequence of their reports. The University of Oxford was first dealt with. The Oxford University Reform Act, 1854 (17 & 18 Vict., c. 81, secs. 43, 44) provided "that it shall not be necessary for any person, upon matriculating in the University of Oxford, to make or subscribe any declaration or to take any oath, any law or statute notwithstanding," and further that no such subscription or oath should be necessary upon taking the degree of Bachelor in Arts, Law, Medicine, or Music, but a proviso was added that such degree should not constitute any qualification for holding any office which had theretofore been held by members of the United Church of England and Ireland, unless the oaths and declarations required by law had been taken and made. The opening to Dissenters of the lower degrees only was intended to prevent them taking any share in the government of the University, and the object of the proviso was to continue the monopoly of educational appointments belonging to members of the Established Church. Two years later the Cambridge University Reform Act, 1856, carried the cause of religious liberty, so far as the younger University was concerned, one step further, by enacting that no oath, declaration, or subscription should thenceforth be required to be taken by any person either (1) upon obtaining any exhibition, scholarship, or other college emolument available for the assistance of an undergraduate student in his academical education, or (2) upon matricu-

lating or taking any degree in Arts, Law, Medicine, or Music, provided, however, that such degree should not, until the holder subscribed a declaration stating that he is bona fide a member of the Church of England, entitle him to become a member of the Senate or qualify him to hold any office either in the University or elsewhere which had theretofore always been held by a member of the Established Church, and for which such degree was a qualification [1]. Not unnaturally, after the passage of these Acts of Parliament the University of Cambridge was more frequented by Jews and other Dissenters than the sister University; for at Cambridge all scholarships and the higher degrees (except in the faculty of theology) were thrown open to all persons irrespective of religion, but the right to hold a fellowship or take any part in the government of the Universities was still strictly confined to members of the Established Church.

The position was not satisfactory, and a wider toleration was demanded. Bills to effect this end were regularly brought forward in Parliament, and at length in 1870 the government of the day took up the question, and a Universities Tests Bill was piloted through the House of Commons by Sir John Duke Coleridge, the Solicitor-General. The Lords, however, shelved it by appointing a Select Committee to consider the matter. The Bill was again introduced the following year and passed, but several amendments intended for the protection of the Church of England were inserted by the House of Lords in accordance with the recommendations of their Select Committee. The effect of the Act is that all degrees, together with all rights and privileges annexed to them, and all offices in the Universities of Oxford, Cambridge, and Durham (which was also included in the Act), or any of their colleges, subsisting at the time the Act was passed, were thrown open to all persons irrespective of their religious belief. The only exceptions are degrees in and professorships of

[1] 19 & 20 Vict., cap. 88, secs. 45, 46.

divinity, and such offices as had been previously by some ordinance or statute confined to persons in or about to enter holy orders (thereby saving the clerical fellowships and headships of houses), or confined to members of the Church of England by reason of a degree being a qualification for holding them. Moreover, no member of a university or college can henceforth be compelled to attend the public worship of any church, sect, or denomination to which he does not belong, or any lecture to which he, if of full age or, if he is under age, his parent or guardian shall object on religious grounds. On the other hand, it is expressly stated that the Act shall not interfere with the religious instruction, worship, and discipline previously established, and every college is required to provide sufficient religious instruction for all its undergraduate members belonging to the Established Church, and also to continue in its chapel as theretofore the daily use of the Morning and Evening Prayer according to the Order of the Book of Common Prayer.

The Act does not apply to new foundations [1], refers only to colleges subsisting at the time of its passage, and it is therefore open for the adherents of any legally recognized religion to establish a college or hall in any of the universities, and conduct it on purely sectarian principles. The Jews have never attempted to create such a foundation, but have liberally availed themselves of the right of becoming members of the colleges thrown open to them by the legislation of the second half of last century.

Having now completed a summary survey of the civil disabilities of the Jews and the means by which these have been removed, before passing to the consideration of their political rights, it may be not without interest to those who have followed the story of their admission to the universities to add a short account of the religious position in the lower branches of education. The anomalies and want of system which characterize almost all our English institu-

[1] See Reg. *v.* Hertford College, Oxford (1878), L.R. 3, Q.B.D. 693.

tions are not absent from those which carry on the education of the country. In dealing with this subject it is not necessary to attempt a scientific classification of English schools, which from a legal point of view may be roughly divided into six classes:

(1) Private schools.
(2) Public schools.
(3) Endowed schools.
(4) Public elementary schools.
(5) Public higher grade and technical schools.
(6) Poor law, reformatory, and industrial schools.

In private schools, which embrace all schools not supported by endowments or money provided from public funds, there is in this country no legal restriction in matters of religion, and the master or owner of such school may at his own pleasure provide or abstain from providing religious instruction, and if he does provide it may insist on all the pupils taking part in it, or make such exceptions as he thinks fit. The instruction may be of any kind the master chooses, subject perhaps to this limitation, that it must be such that it can be brought within the tenets of one or other of the religions which have been admitted to the benefits of the Toleration Acts, and provided also that no attempt is made to make children educated in the Christian religion deny the truth of Christianity, for such an attempt might bring the master within the pains and penalties of the obsolete but still existing Act for the more effectual suppressing of Blasphemy and Profaneness (9 Will. III, c. 35), the history of which was given in the second of these articles. The only remedy of a parent who disapproves of the religious education given at a private school is to withdraw his child and place him at another school.

Public schools in the legal sense include only those which come under the provisions of the Public Schools Act, 1868, and its amending Acts (31 & 32 Vict., c. 118; 32 & 33 Vict., c. 58; 34 & 35 Vict., c. 60; 36 & 37 Vict., c. 41 and c. 62), namely,

Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury. The principal Act empowers the governing bodies of these schools to make, and from time to time to alter and annul, regulations with respect to various matters, amongst which those relating to religion are—(*a*) With respect to attendance at Divine service, and, where the school has a chapel of its own, with respect to the chapel services and the appointment of preachers. (*b*) With respect to giving facilities for the education of boys whose parents or guardians wish to withdraw them from the religious instruction given in the school. The headmaster is, however, entitled to be consulted on all such regulations, and also to submit to the Governing Body proposals for making new or altering or annulling old regulations. At the present time Harrow is the only one of these schools in which regulations have been made to enable Jewish boys not only to be absent from Divine service in the school chapel, but also to receive instruction in the tenets of their own religion.

It should be added that by the thirteenth section of the Act of Uniformity (14 Car. II, c. 4), which is still unrepealed as to them, the governors and heads of Westminster, Winchester, and Eton are required to conform to the Church of England and subscribe the Thirty-nine Articles.

Endowed schools are now governed by the Endowed Schools Act of 1869 and the amending Acts (32 & 33 Vict., c. 56; 36 & 37 Vict., c. 87; and 37 & 38 Vict., c. 87), and comprise all schools (other than those coming under the Public Schools Act) which are wholly or partly maintained by means of any endowment, including therefore many of the institutions popularly known as public schools. Before 1869 these schools had been divided into two classes, there being no statutory requirement as to exemption from religious education of children in schools which came under the Grammar Schools Act of 1840 (3 & 4 Vict., c. 77), but in the case of other endowed schools it was provided by the Endowed Schools Act, 1860 (23 & 24 Vict., c. 11), that

it should be lawful for the trustees or governors of every endowed school to make, and that they should be bound to make, orders admitting to the benefits of the school the children of parents not in communion with the church, sect, or denomination to which the endowment belonged, unless the will, deed, or other instrument regulating the endowment expressly required all children educated under it to be instructed according to the doctrines or formularies of such church or denomination.

This provision was, however, not considered adequate, and the Endowed Schools Act of 1869 was passed on the recommendation of the commissioners appointed five years previously to consider the question. It applies both to grammar schools and other endowed schools, and as to religious teaching provides that in every scheme which the commissioners—now the Charity Commissioners—shall frame for the regulation of such schools provision shall be made that the parent or guardian of any child attending as a *day scholar* may claim by notice in writing addressed to the principal teacher the exemption of such scholar from attending prayer or religious worship, or from any lesson on a religious subject, and that such scholar shall be exempted accordingly without forfeiting any advantage or emolument to which he would otherwise be entitled, except such as may by the scheme be expressly made dependent on learning such lessons, and further that upon complaint from the parent or guardian that any teacher systematically teaches any religious doctrine to a child after such notice has been sent, the governing body shall inquire into the complaint, and if judged well founded shall take proper measures for its remedy.

This refers to day scholars only, but with regard to boarding schools it is enacted that every scheme shall provide that the parent or guardian of any scholar about to attend such school, who otherwise could only be admitted as a boarder, desires his exemption from attending prayer or religious worship or any lesson on a religious subject,

but the persons in charge of the boarding houses of the school are not willing to allow such exemption, then it shall be the duty of the governing body of the school to make proper provisions for enabling the scholar to attend the school and have such exemption as a day scholar.

Moreover, the religious opinions of any person or his attendance or non-attendance at any particular form of religious worship shall not in any way affect his qualification for being one of the governing body of such endowment. But schools which are maintained out of the endowment of any cathedral or collegiate church, or the scholars of which are required by the express terms of the instrument of foundation to be instructed according to the doctrines or formularies of any particular church, sect, or denomination, are excepted from these provisions as to religious instruction[1] or worship, other than those for the exemption of day scholars when it has been duly claimed. It is to be observed that these conscience clauses do not enable parents to claim exemption for their children from attendance upon a Saturday, or any other day to be set apart for religious observance by the tenets of their creed, nor to insist upon their admission as boarders, though they can demand that provision should be made for them to attend an endowed school, which has theretofore been confined to boarders, as day scholars, and in fact at several schools, such as Clifton, Cheltenham, and the Perse Grammar School, boarding houses for the exclusive use of Jewish boys have actually been established[2].

In the case of public elementary schools it was necessary to make more stringent provisions upon this subject, because the Education Act of 1870 made attendance at these schools compulsory for all children whose education was not otherwise provided for by their parents. It was therefore enacted that no child should be compelled to

[1] 32 & 33 Vict., cap. 56, sec. 19, and see also 36 & 37 Vict., cap. 87, sec. 7.

[2] See In *re* the Endowed Schools Act, 1869, in *re* Christ's Hospital (1890), L.R. 15, A.C. 172, esp. pp. 181–3.

attend or abstain from attending any Sunday school or place of religious worship, and that any parent may withdraw his child from any religious observance kept or religious instruction given in the school, and also from attendance at the school upon any day exclusively set apart for religious observance by the religious body to which he belongs. In order to make the right of withdrawal from religious instruction effective it was further provided that such instruction should only be given at the beginning or the end of the school hours at times to be inserted in a time-table, which must be approved by the Board of Education [1], which last provision is sufficient to prevent the sacrifice of secular to religious education by devoting too large a proportion of the school hours to the latter.

These provisions apply to all public elementary schools, and in the case of those provided by a local authority it is further

[1] 33 & 34 Vict., cap. 75, sec. 7, the words of which are: "(1) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which the parent belongs.

"(2) The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end, or at the beginning and the end of such meeting, and shall be inserted in a Time-table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every school-room; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school. (See also sec. 74 (2).)

"(3) The school shall be open at all times to the inspection of any of Her Majesty's Inspectors, so, however, that it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book."

Provision for the examination of children in religious subjects is made in sec. 76, which, however, is applicable only to non-provided schools.

enacted by section 14 of the Act of 1870, commonly known as the Cowper-Temple clause, that "no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school." This section is not in practice any valid protection for Jewish children, because the Board of Education has held that under it, although the catechism of any particular Christian sect may not be taught, yet the Lord's Prayer and the Apostles' Creed (being common to all Christian sects) may be subjects of instruction, and that portions of the Bible, including of course the New Testament, may be read, and such explanations given as are conformable to the principles of the Christian religion. On the other hand, under the conscience and time-table clause already referred to this religious instruction can only be given at the beginning or end of the school hours, and Jewish parents have an absolute right to withdraw their children while the lessons in religion are being taught. As in most schools separate instruction in secular subjects is given to children withdrawn from the religious teaching or observances, if Jews desire that their children attending such schools shall receive instruction in their own religion, it is necessary for them to supply it at their own expense, and in hours not included in the regular school time. This is done in many of the London public elementary schools by the Jewish Religious Education Board, and there are similar Jewish bodies performing the same duty in Manchester and other towns where there is a large Jewish population.

In non-provided or voluntary schools the religious instruction shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers[1]. In order that the provisions of the trust deed may be effectually executed, it is enacted that, though the managers of such schools are bound to carry out the directions of the local education authority as to secular education, yet those

[1] Education Act, 1902 (2 Edw. VII, cap. 42), sec. 7 (6).

directions shall not be such as to interfere with reasonable facilities for religious instruction during school hours. And further, the managers are given the power of dismissing a teacher without the consent of the local education authority on grounds connected with the giving of religious instruction in the school[1]. There are several such Jewish schools to be found in London and the larger provincial centres, and it should be remembered that to these schools also the conscience and time-table clauses are strictly applicable.

Public higher and technical schools are schools either provided by or receiving pecuniary assistance from local authorities under various recent Acts of Parliament, which provide a higher education than that given in the public elementary schools. Section 4 of the Education Act, 1902, enacts with regard to the religious instruction to be given at these schools as follows: "(1) A council shall not require that any particular form of religious instruction or worship, or any religious catechism or formulary which is distinctive of any particular denomination, shall or shall not be taught, used, or practised in any school, college, or hostel aided but not provided by the council, and no pupil shall on the ground of religious belief be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college, or hostel so provided, except in cases where the council, at the request of parents of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college, or hostel, otherwise than at the cost of the council: provided that in the exercise of this power no unfair preference shall be shown to any religious denomination.

"(2). (*a*) A scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain

[1] Education Act, 1902, sec. 7 (1) (*a*) and (*c*).

from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere; and

"(*b*) The times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom."

The law as to poor-law schools has little interest for the Jews, who rightly pride themselves on saving their poorer brethren from resorting to the workhouse; so that there are probably no Jewish children in any workhouse schools; should, however, any Jewish children be dependent on the union, the guardians would probably avail themselves of the provisions of the Poor Law (Certified Schools) Act, 1862, enabling them to send a poor child to any school certified as fit for the purpose, but by the Act no child may be sent to any school which is conducted on the principles of a religious denomination to which he does not belong, and the Poor Law (now the Local Government) Board, if of opinion that any person is aggrieved by any child being so sent or kept at any school, may order its immediate removal[1].

Reformatory schools are established for the better training of youthful offenders, i.e. of persons under the age of sixteen years convicted of an offence punishable with penal servitude or imprisonment. Such persons may by the court or justices be committed to a certified reformatory school, but in choosing the school regard must be had to their religious persuasion, which should be ascertained and specified by the committing authority in the order of committal. Moreover, they are to be allowed to receive visits from a minister of their religious persuasion at certain fixed hours of the day for the purpose of receiving religious assistance and instruction in the principles of their religion. There is also a further provision entitling the parent, guardian, or nearest adult relative to procure the removal

[1] 25 & 26 Vict., cap. 43.

of a youthful offender from one reformatory school to another conducted in accordance with his religious persuasion, by applying to the court or magistrates by whom the sentence was pronounced, provided that the application is made before the offender has been in the school thirty days, and that the managers of the school named by the applicant are willing to receive the offender[1]. The Secretary of State has also power to remove an offender from one reformatory school to another, or discharge him altogether.

Industrial schools differ from reformatory schools in that they are established not for the punishment and reform of offenders, but for the protection of children whom the benefits of the ordinary system of education fail to reach. To these schools magistrates are empowered to commit children for a variety of reasons enumerated in the Industrial Schools Act, the provisions of which in relation to the choice of a school conducted in accordance with the parents' religious persuasion, the visiting of the child by a minister of its own denomination, and the right of the parent or nearest adult relative to procure the removal of the child to another school conducted in accordance with the child's religious belief, are precisely the same as those already set out in the case of reformatory schools[2]. It has been found necessary to establish a Jewish Industrial School at Hayes in Middlesex.

H. S. Q. Henriques.

[1] Reformatory Schools Act, 1866 (29 & 30 Vict., cap. 117, secs. 14, 16).

[2] See The Industrial Schools Act, 1866 (29 & 30 Vict., cap. 118, secs. 18, 25, and 20). (See Model rules, Dumsday and Mothersole, p. 715.)